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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,049	05/04/2001	Marcos Katz	P 278027	8228

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EXAMINER

GELIN, JEAN ALLAND

ART UNIT	PAPER NUMBER
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2681

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/831,049

Applicant(s)

KATZ, MARCOS

Examiner

Jean A Gelin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 4,5,14 and 15 is/are allowed.  
6) ☒ Claim(s) 1-3,6-13 and 16-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 04 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This is in response to the Applicant's amendments and arguments filed on May 12, 2004 in which claims 1-20 have been amended. Claims 1-20 are currently pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 6-13, and 16-20 are rejected under 35 U.S.C. 102(b) as being by anticipated by Kotzin (US 5,455,962).

Regarding claims 1, 2, 11, and 12, Kotzin teaches a data transmission method used in a radio system comprising a subscriber terminal (10) and at least one base station (21) which transmits signals to the subscriber terminal by means, of its antenna (22, 23) (col. 3, lines 19-30), the method comprising determining the quality of the signals received by the subscriber terminal by comparing the received signals with at least one signal quality threshold level (col. 5, line 59 to col. 6, line 25), sending to the base station (23), which transmitted the signal that exceeded the threshold, information on the antennas, which transmitted the signals that exceeded the threshold (i.e., MS sends information to BS regarding signal quality, col. 5, lines 50 to col. 6, line 25), selecting from the antennas, which transmitted the signal that exceeded the threshold, an antenna or antennas to continue the transmission of the signal to said subscriber

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terminal (i.e., when the threshold is not exceeded, switching to another to maintain communication, col. 5, line 50 to col. 6, line 43).

Regarding claims 3 and 13, Kotzin teaches when the quality of several signals is within the acceptable levels, information on the quality of the signals is sent to the base station (23), and the base station can, on the basis of the information, decide which antenna it will use to continue transmitting the signal (col. 6, lines 1-43).

Regarding claims 6 and 16, Kotzin teaches if the quality of the signal received by the subscriber terminal (10) is below the lowest acceptable quality level, information on the quality of the above-mentioned signal is sent to the base station which, after receiving the information, interrupts the transmission of the poor-quality signal (col. 6, lines 11-25).

Regarding claims 7, 9, 17, and 19, Kotzin teaches the signal is transmitted to the subscriber terminal (10) by means of beams, and the final decision on the transmission antenna, transmission beam to be used by the base station is made in the base station (21) (col. 5, line 59 to col. 6, line 10).

Regarding claims 8, 10, 18, and 20, Kotzin teaches the signal is transmitted to the subscriber terminal (10) by means of beams, and the final decision on the transmission antenna, transmission direction or beam to be used by the base station is made in the subscriber terminal (10) (col. 6, lines 11-43).

***Allowable Subject Matter***

4. Claims 4, 5, 14, and 15 are allowed.

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5. The following is a statement of reasons for the indication of allowable subject matter: claims 4, 5, 14, and 15 have been rewritten in independent form including all the limitations of their base claims, therefore they are allowed for the same reasons recited in the previous Office Action (paper no. 5).

### ***Response to Arguments***

6. Applicant's arguments filed 5/12/04 have been fully considered but they are not persuasive.

The Applicant argues that Kotzin does not disclose selecting from the antennas, which transmitted the signal that exceeded the threshold, an antenna or antennas to continue the transmission of the signal to said subscriber terminal as recited in claim 1. However, the Examiner disagrees with the preceding assertion because Kotzin teaches selecting the antenna, which the quality of the signal exceeds, the threshold at the MS (i.e., when the threshold is not exceeded, switching to another to maintain communication, col. 5, line 50 to col. 6, line 43). Therefore, the antenna that exceeds the threshold is selected to maintain communication (corresponding to the claimed invention). The rejection is maintained.

Applicant further argues that unlike Kotzin, there is no continuous switching from one antenna to the other. Instead, certain antennas are selected to continue transmission. However, the Examiner disagrees with the preceding argument because the purpose of the switching in Kotzin is to select the best antenna to maintain communication. Therefore, the rejection is maintained and made final.

Claims 2, 11, and 12 include the above limitations. Therefore, they are interpreted and rejected for the same reasons as argued above.

Note: the word "or" in claims permits the examiner to examine one portion of the claims or the other.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Miyashita et al. (US 6,473,466) teaches data transmitting method and data transmitting apparatus accompanied with plurality of transmitting and receiving antennas

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A Gelin whose telephone number is (703) 305-4847. The examiner can normally be reached on 9:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Erika A Gary can be reached on (703) 308-0123. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JEAN GELIN**  
**PATENT EXAMINER**

JGelin  
July 15, 2004

*Jean Allard Gelin*